IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 671 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASULBHAI AMIRBHAI GARASIA

Versus

DY MAMLATDAR ((REVENUE)

Appearance:

1. Special Civil Application No. 671 of 2000

MR CL SONI for Petitioner No. 1

Mr. H.C. Patel, AGP for Respondent No. 1-3

Mr. N.A.Shaikh for Respondent NO.4.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/11/2002

ORAL JUDGEMENT

Heard learned advocate Mr. C.L. Soni for the

petitioner; Mr. H.C. Patel, learned AGP for respondents No.1 to 3. Learned advocate Mr. NA Shaikh appearing for newly added respondent No.4 who has been ordered to be joined as respondent No. 4 by passing orders in Civil Application No. 8279 of 2002 has filed sick note for today.

In this petition, the petitioner has challenged the order passed by the Gujarat Revenue Tribunal in Revision Application NO. 162 of 1996 dated 3.11.1999. Brief facts, as narrated by the petitioner in this petition, are to the effect that the petitioned had declared the lands held by him in his own name as well as in the name of the joint family by submitting particulars in Form NO.2 under the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960. The petitioner had declared that he, with his joint family, held lands ad measuring 28 Acres and 33 Gunthas. It was also declared by him that out of Block NO. 108 (survey no. 105), he had sold 7 Acres and 17 Gunthas of the land to one Shri Rasulbhai Vajirbhai Garasia. Satakhat (Agreement to sell) for the said land was entered into on 15.5.1968 and possession receipt was also executed in favour of the said person on 15.5.1968 for the said land. According to the petitioner, his form was processed and considering the evidence, the Mamlatdar vide his order dated 12.3.1987 declared 5 Acres and 12 Gunthas as excess land. Said order was challenged by the petitioner before the respondent No.2 by filing two different appeals and the respondent NO.2 Deputy Collector confirmed the said order of the Mamlatdar. Against the order passed by respondent NO.2, two different revision applications being revision application No. 88 of 1988 and 126 of 1988 were preferred wherein the tribunal vide its order dated 29.4.1992 remanded the matter to respondent No.1 for fresh decision. According to the petitioner, respondent No.1 again decided the matter by holding that the total area held by the petitioner was not in excess of 36 Acres which were retainable land under the Act and, therefore, he ordered to withdraw the notice issued to the petitioner against which, the Deputy Collector (Revenue) filed appeal being Appeal No. 33 of 1994 before respondent NO.2 which was allowed by respondent NO.2 vide his order dated 21.5.1994 and again remanded the matter back to respondent NO. 1. According to the petitioner, respondent no.1 again called for the canal certificate and proceeded with the hearing of the matter and finally came to the conclusion that the petitioner was holding 7 Acres and 9 Gunthas of the land as excess land. Against the order passed by respondent No.1, petitioner preferred ceiling appeal no. 15 of 1996 before the respondent No.2

before whom the matter was argued in detail. However, respondent No.2 after considering the evidence on record and the submissions made on behalf of the parties, dismissed the appeal filed by the petitioner by his order dated 11.7.1996. Against the said order of respondent NO.2, the petitioner filed revision application no. Ten.BS.162 of 1996 wherein the tribunal by its order dated 3.11.1999, dismissed the said revision application and, therefore, present petition has been filed by the petitioner.

Learned advocate Mr. C.L. Soni appearing for the petitioner has raised the only one contention before this Court while challenging the orders passed by the lower authorities that before the Mamlatdar ALT (Ceiling) Choryasi Court in Ceiling Case No. 659 of 1976, contention was raised by the petitioner that the petitioner is not accepting or admitting the Canal Certificate issued by the Canal Officer; the petitioner also requested to the concerned authority to give reasonable opportunity to cross examine the canal officer. From these submissions, two facts are clear that whatever Canal Certificate issued by the Canal Officer was not admitted by the petitioner and a request was made for granting him an opportunity to cross examine the Canal Officer. He also submitted that after remanding the matter back, the authority has demanded Canal Certificate from the Canal Officer by order dated 14.10.1994 which certificate was given by the Canal Officer and the same was kept on the record. It was also submitted by him that while deciding the matter, as referred to above, the Mamlatdar came to the conclusion that whatever submissions made by the petitioner in respect of the Canal Certificate cannot be considered because the certificate is considered to be the conclusive proof and, therefore, the submission made by the petitioner for an opportunity of cross examination of the Canal Officer was rejected by the Mamlatdar. It was also submitted by him that before the Deputy Collector also in Appeal No. 15 of 1996, a specific contention was raised by the petitioner that no reasonable opportunity was given to the petitioner for cross examination of the Canal Officer but the said contention raised by the petitioner before the Deputy Collector in appeal no. 15 of 1996 was not considered and relying upon the canal certificate, he rejected the appeal filed by the petitioner. He also submitted that the said order of the Deputy Collector was challenged by the petitioner before the Gujarat Revenue Tribunal and before the tribunal also, same contention was raised by the petitioner that the opportunity of cross examination of the Canal Officer

was not given by the Mamlatdar to the petitioner. He also submitted that though such specific contention was raised by the petitioner before the tribunal and though the submissions on that line were made by the petitioner before the tribunal, the tribunal has come to the conclusion that on the basis of the submissions made by the Government advocate that there was no prayer or request made by the petitioner before the lower authority for cross examination of the canal officer and, therefore, at the stage of revision, such request cannot be considered. Such finding was given by the tribunal in its order dated 3.11.1999. He also submitted that right from the beginning after remand of the matter to the Mamlatdar, reasonable request made by the petitioner for an opportunity of cross examination of the Canal Officer was not considered by the Mamlatdar and without examination and cross examination of the Canal Officer, such canal certificate issued by the Canal Officer was considered as a conclusive evidence; contention in that regard raised by the petitioner before the deputy collector was not considered and appreciated by the deputy collector and rejected the appeal and, therefore, the revisional authority has committed an error in recording the conclusion that such contention has not been raised by the petitioner before the lower authorities. According to him, this is an error committed by the tribunal which is apparent on the face of the record and, therefore, orders passed by the lower authorities as well as the order of the Gujarat Revenue Tribunal are required to be quashed and set aside.

On the other hand, learned AGP Mr. H.C. Patel appearing for the respondent authorities has submitted that no doubt, request was made by the petitioner for an opportunity of cross examination of the Canal Officer who issued the Canal Certificate but the lower authority found that there is no need of cross examination of the Canal Officer by the petitioner because that certificate itself was considered as conclusive proof as per the record and, therefore, as such, there was no need for giving an opportunity of cross examination of the Canal Officer and, therefore, there is no error committed either by the lower authorities or the Gujarat Revenue Tribunal which would require interference of this Court in exercise of the powers under Article 226/227 of the Constitution of India.

I have considered the submissions made by Mr. Soni, learned advocate for the petitioner and Mr. H.C. Patel, learned AGP on behalf of the respondent authorities. I have also perused each and every orders

passed by the lower authorities upto the tribunal. Looking to the record, it is clear that at page 26 in the order of the Mamlatdar, a specific contention has been raised by the petitioner that he is not admitting the canal certificate and he has requested the Mamlatdar for giving him an opportunity of cross examination of the Canal Officer. The submission made by the petitioner was narrated by the Mamlatdar in his order at page 26 (internal page 4 of the order). The Mamlatdar (ALT) has given reasons in support of his conclusion. In reason NO.2, he concluded that whatever submissions made by the petitioner in respect of the Canal Certificate cannot be considered as the Canal Certificate is considered to be the conclusive proof of the record and, therefore, the contention raised by the petitioner in that regard was negatived and the prayer for cross examination of the Canal Officer was rejected by the Mamlatdar. Thus, from the bare reading of the order of the Mamlatdar, it is clear that such contention was raised, prayer was made and they were considered and rejected by the Mamlatdar. Thereafter, that order was challenged by the petitioner before the Deputy Collector, Olpad by filing appeal wherein in appeal memo itself,contention to that effect was raised by the petitioner that no opportunity of cross examination of the canal officer was given to the petitioner and without cross examination of the canal officer, canal certificate was considered by the Mamlatdar as conclusive proof. That contention raised by the petitioner was dealt with by the Deputy Collector and, thereafter, appeal of the petitioner was dismissed. In view of this, the revisional authority has committed gross error in holding that there was no submission made by the petitioner before the lower authority in respect of an opportunity of cross examination of the canal officer. Such conclusion recorded by the revisional authority namely Tribunal is contrary to the record. Thus, the tribunal has committed an error which is apparent on the face of the record because as stated above, before the Mamlatdar, prayer for opportunity of cross examination of the canal officer was made by the petitioner and was not granted by the Mamlatdar and without cross examination of the canal officer, certificate issued by the canal officer was considered as conclusive proof though it was not admitted by the petitioner. Likewise, before the Deputy Collector also, contention was raised in the appeal that such an opportunity was not given by the Mamlatdar. Therefore, according to my opinion, the lower authorities have committed an error in not granting an opportunity of cross examination of the Canal Officer to the petitioner. The Mamlatdar (ALT) has committed an error in not

granting such an opportunity to the petitioner and has also erred in considering the canal certificate issued by the canal officer as a conclusive proof in absence of the cross examination of the canal officer. The Deputy Collector has committed error in not appreciating this contention in its proper perspective and the error committed by the tribunal is apparent on the face of the record as stated earlier. Therefore, according to my opinion, the orders passed by the authorities below are required to be quashed and set aside by remanding the matter back to the Mamlatdar (ALT) for fresh consideration of the matter in accordance with law after giving reasonable opportunity to the parties in these proceedings and also after giving opportunity of cross examination of Canal Officer to the petitioner. Therefore, this petition is required to be allowed.

At this stage, it is necessary to make reference to the earlier proceedings arose between the parties. Initially, the Mamlatdar & ALT (Ceiling) Choryasi, in case no. 659 of 1976, by order dated 25th June, 1993, has declared that the present petitioner is not holding any excess land. That order of the Mamlatdar & ALT (Ceiling) Choryasi dated 25th June, 1993 was challenged by the State Government - Dy. Mamlatdar, Olpad before the Deputy Collector, Olpad in Appeal NO. 23 of 1994. Before the Deputy COllector in the said appeal proceedings, it has been contended that the decision has been given by the Mamlatdar & ALT concerned without obtaining Canal Certificate and, therefore, the order is bad. In the said appeal, the appellate authority has make reference to the earlier decision of the Revenue Tribunal dated 29th April, 1992 in respect of the very subject matter and in para 12 of the decision given by the tribunal, it has been observed that in respect of the Canal Certificate, both the parties are entitled to have reasonable opportunity and thereafter, on that ground, the tribunal has remanded the matter back to the Mamlatdar & ALT (Ceiling) Choryasi. The Canal Officer has not given the certificate after hearing the respective parties. Therefore, ultimately, the Deputy Collector, Olpad set aside the orders of the Mamlatdar & ALT (Ceiling) Choryasi dated 25th June, 1993 and remanded the matter back to the Mamlatdar & ALT concerned with a direction that the form which was filled up by the petitioner will have to be considered in light of the Canal Certificate but the Canal Certificate was not obtained and, therefore, the Deputy Collector has directed that the Canal Certificate may be obtained from the Canal Officer after giving reasonable opportunity to

the respective parties. The appellate authority also observed that the petitioner who has filled up the Form on 29th April, 1976 in Column 7(G), he has made mention of the fact that 16 acres 6 gunthas are irrigated land which is also required to be taken into account. Prior to that, the Mamlatdar & ALT, Olpad by order dated 12th March, 1987 declared excess land in Block No. 108 ad measuring 5 acres 12 Gunthas and in some area, 11 acres 35 gunthas. Said order of the Mamlatdar & ALT dated 12th March, 1987 was challenged before the Deputy COllector, Olpad by way of Appeal No. 51 of 1987 and 59 of 1987. Both the appeals were dismissed by the Deputy Collector, Olpad by order dated 31st December, 1987. Against that order of the Deputy Collector dated 31st December, 1987, two revision applications being revision application no. 121 of 1988 and 85 of 1988 were preferred before the Gujarat Revenue Tribunal which were decided by the tribunal on 29th April, 1999. In the said decision of the tribunal, relevant observations have been made by the tribunal in respect of the canal certificate in paragraph 12. It was observed by the Tribunal that the Canal Officer has not given the Canal Certificate after hearing the petitioner and, therefore, canal certificate was given by the canal officer without hearing the petitioner. Therefore, one decision of this Court dated 24th September, 1985 rendered in Special Civil Application NO. 3756 of 1983 was considered by the tribunal and, thereafter, the tribunal has come to the conclusion that the analysis of the irrigated land amounts to quasi judicial proceedings and, therefore, Canal Officer has to give such certificate after hearing the respective parties concerned. According to the petitioner, before the tribunal, in the said area, canal was given after the year 1976 but the question was raised by the petitioner was as to whether the irrigation facility was available or not on 1st April,1971. The tribunal observed that the Mamlatdar & ALT has taken into account the Canal Certificate issued by the Canal Officer wherein the land has been analyzed but the Canal Officer was not examined; not only that but prior to the issuance of the canal certificate by the canal officer, the land holder was not heard and no opportunity was given to the land holder. Therefore, considering this aspect alone and relying upon the decision of this court referred to hereinabove, the tribunal has remanded the matter back to the Mamlatdar & ALT on the ground that in respect of the Canal Certificate, parties concerned are required to be heard and reasonable opportunity must have to be given and then to examine and consider the merits of the matter.

Therefore, considering the said two decisions of the authorities referred to above, one of the Deputy Collector, Olpad and the another from the Gujarat Revenue Tribunal on the ground that earlier also, same question was examined by the respective authorities in respect of the very subject matter and the question was that the canal certificate was issued by the Canal Officer without hearing the petitioner and also without giving him an opportunity to the land holder and that the canal officer was not examined before the authority. In the present proceedings also, same error has been committed by the Mamlatdar & ALT and the Deputy COllector in Appeal and similarly, GRT too. This being the third round and again this Court has to consider the very same question which has been raised by the petitioner that the canal certificate issued by the Canal Officer without hearing the petitioner and it was considered as conclusive proof though it was not admitted by the petitioner and before considering it as a conclusive proof, the petitioner was not given an opportunity of cross examination of the canal officer. This contention has been rejected by the authorities below without any reason and justification.

Since I am allowing this petition by quashing and setting aside the orders passed by the lower authorities by remanding the matter back to the Mamlatdar for fresh decision in accordance with law after hearing the parties to these proceedings, I am of the view that this order of remand would not adversely affect respondent No.4 who has been ordered to be joined as such by order passed by this Court today in Civil Application No. 8279 of 2002 in this petition, even in absence of the learned advocate Mr. N.A. Shaikh appearing for respondent No.4 who has filed sick note for today.

Therefore, in the result, this petition is allowed. The order passed by the Mamlatdar & ALT Choryasi (Ceiling) in Ceiling Case No. 659 of 1976 dated 4th December, 1995, the order passed by the Deputy Collector, Olpad in Appeal No. 15 of 1996 dated 11thJuly, 1996 and the order passed by the Gujarat Revenue Tribunal in Revision Application No. 162 of 1996 dated 3rd November, 1999 are hereby quashed and set aside and the matter is remanded back to the Mamlatdar and ALT, Choryasi for deciding a fresh ceiling case no. 659 of 1976 after giving reasonable opportunity to the petitioner to cross examine the Canal Officer and to pass appropriate orders in accordance with law after giving reasonable opportunity to all the parties in these proceedings, within a period of six months from the date of receipt of copy of this order. It is made clear that

this Court has not examined the merits of the matter but has set aside the orders passed by the lower authorities only on the ground that the reasonable opportunity has not been given to the petitioner which, in the opinion of this Court, itself is sufficient for setting aside the orders passed by the lower authorities. In view of that, it is clarified that the merits of the matter have not been examined by this Court and, therefore, it is expected that the lower authorities will examine the merits of the matter as per the record of the present proceedings and will pass appropriate orders in accordance with law after giving reasonable opportunity to the parties to the present proceedings without being influenced by this order. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt. 27.11.2002. (H.K. Rathod,J.)

Vyas